

### REMARKS

The Examiner has rejected all of the pending claims and made the rejection final under MPEP §706.07(a).

The Examiner rejected Claims 1 and 11-15 under 35 U.S.C. §112 first paragraph as failing to comply with the written description requirement.

Claims 1-3 and 11-15 were rejected under 35 U.S.C. §102 (b) as being anticipated by Bromley, U.S. Patent No. 6,295,661. Claims 5 and 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bromley. Claim 9 was rejected under 35 U.S.C. §103(a) as being unpatentable over Bromley in view of Johnson, U.S. Patent No. 5,842,811.

Applicant respectfully submits that the pending claims are allowable and will address the Examiner's rejections below.

### THE FINAL REJECTION

Applicant respectfully requests that the Examiner withdraw the Final Rejection on the grounds it is premature.

Applicant submits that the new grounds of rejection raised by the Examiner on new prior art were not necessitated by Applicant's prior Amendment. Applicant's Amendment merely clarified the claims without adding any new structure or limitation beyond what was already inherent in the claims as originally filed. Applicant's arguments overcoming the Examiner's prior Section 102(b) rejection were not conditioned upon the claim amendments. Therefore Applicant submits that making the current rejection Final was premature and should be withdrawn.

### THE SECTION 112 REJECTION

The Examiner rejected Claims 1 and 11-15 under 35 U.S.C §112, first paragraph on the grounds the structure of the top cap and stem are not described in the specification. Applicant submits that the structure of these elements as claimed in the rejected claims is described in the

specification. The Examiner is referred to Page 4, lines 3-5; to Page 6, line 30; Page 7, lines 6-7; Page 8, lines 22-25 and Page 9, lines 6-8 of the Specification. However, Applicant has amended the specification to more clearly describe the structure in conformance with the drawings. Since the structure was shown in the drawings as originally filed this does not constitute new matter. Applicant respectfully submits that the Section 112 rejection is now rendered moot.

#### THE SECTION 102 REJECTION

The Examiner rejected Claims 1-3 and 11-15 as being anticipated by Bromley, U.S. Patent No. 6,296,661. Concerning Claim 1 the Examiner stated:

Regarding claim 1: Bromley disclosed a device capable for use as a construction hole safety devise compromising:

a top cap (A, see annotated figure 2 below) having top and bottom surfaces and an underlying body stem (B) fixedly attached to the bottom surface of said cap and extending substantially perpendicularly from said bottom surface, said device made of sturdy, wear-resistant material (Col. 7, lines 37-39), wherein said body stem can fir within a man-made hole, and withstand the weight of people and construction equipment traveling thereon.

In making this statement the Examiner identified a grate screw bore 26 as the underlying body stem.

Applicant respectfully submits that the Examiner has misunderstood the disclosure of Bromley. First, the grate 22 of Bromley does not include a stem which fits within a man-made hole as claimed. What the Examiner has characterized as a stem is actually a plurality of screw holes 26 formed in the grate 22. Moreover, the grate 22 does not fit within a hole but rather sits on soft gasket 32. Grate 22 is not designed to be inserted within the hole at the bottom of the swimming pool. It rides up and down on gasket 32 and at all times is above the bottom surface of the pool.

Accordingly, Applicant respectfully submits that Bromley cannot anticipate the claimed invention. The Examiner's rejections of dependant Claims 2, 3 and 11-15 are similarly based upon an erroneous construction of Bromley and should be withdrawn.

THE SECTION 103 REJECTION

The Examiner has rejected Claims 5, 7 and 9 as being obvious. All three rejections are premised on the Examiner's misconstruction of Bromley and Applicant respectfully submits that said claims are allowable as discussed above.

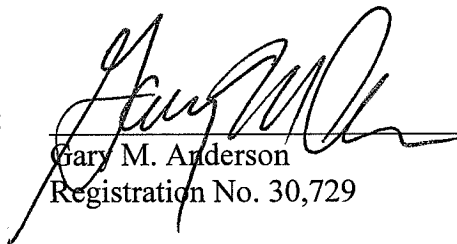
Applicant submits that the application is now in condition for allowance and reconsideration of the application is respectfully requested. If any additional fees are due in this matter, please charge our Deposit Account No. 21-0800.

Respectfully submitted,

FULWIDER PATTON LLP

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By:

  
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